

## Department of Veterans Affairs

## § 19.37

Board, it develops the evidence or cures a procedural defect, unless:

(1) The only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case; or

(2) The Board specifies in the remand that a Supplemental Statement of the Case is not required.

(Authority: 38 U.S.C. 7105(d)).

[67 FR 3104, Jan. 23, 2002]

### **§ 19.32 Closing of appeal for failure to respond to Statement of the Case.**

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated.

(Authority: 38 U.S.C. 7105(d)(3))

### **§ 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.**

If, within the agency of original jurisdiction, there is a question as to the timely filing of a Notice of Disagreement or Substantive Appeal, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 7105, 7106)

### **§ 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.**

Whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to timely filing of the Notice of Disagreement or Substantive Appeal, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 7105)

### **§ 19.35 Certification of appeals.**

Following receipt of a timely Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans' Appeals. Certification is accomplished by the completion of VA Form 8, "Certification of Appeal." The certification is used for administrative purposes and does not serve to either confer or deprive the Board of Veterans' Appeals of jurisdiction over an issue.

(Authority: 38 U.S.C. 7105)

[57 FR 4104, Feb. 3, 1992, as amended at 61 FR 20449, May 7, 1996; 66 FR 53339, Oct. 22, 2001]

### **§ 19.36 Notification of certification of appeal and transfer of appellate record.**

When an appeal is certified to the Board of Veterans' Appeals for appellate review and the appellate record is transferred to the Board, the appellant and his or her representative, if any, will be notified in writing of the certification and transfer and of the time limit for requesting a change in representation, for requesting a personal hearing, and for submitting additional evidence described in Rule of Practice 1304 (§ 20.1304 of this chapter).

(Authority: 38 U.S.C. 7105)

### **§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.**

(a) *Evidence received prior to transfer of records to Board of Veterans' Appeals.* Evidence received by the agency of original jurisdiction prior to transfer of the records to the Board of Veterans' Appeals after an appeal has been initiated (including evidence received after certification has been completed) will be referred to the appropriate rating or authorization activity for review and disposition. If the Statement of the Case and any prior Supplemental Statements of the Case were prepared before the receipt of the additional evidence, a Supplemental Statement of the Case will be furnished to the appellant and his or her representative as provided in § 19.31 of this part, unless the additional evidence received duplicates evidence previously of record which was discussed in the Statement